

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

State of New Hampshire

v.

Michael Addison

Docket No.: 07-S-0254

ORDER REGARDING WMUR'S MOTION TO AMEND

WMUR Channel 9 asks the Court to amend its media order of December 27, 2006 to allow live coverage of all pretrial hearings and the trial of this case. The State takes no position on the motion, while the defendant objects to live coverage of pretrial hearings and takes no position as to the trial. Defendant argues that "there is a substantial likelihood of harm, as contemplated by Superior Court Rule 78, if pretrial proceedings are broadcast live." Defendant argues that "(l)ive coverage will lead to even greater publicity and a greater likelihood of the case being pre-judged by potential jurors before the first witness testifies." Defendant also argues that unanticipated, prejudicial events may occur at a pretrial hearing and broadcasting the hearings live will prevent any appropriate remedial measures by the Court or media.

In this State, courts are presumed to be open to media coverage. *Petition of WMUR Channel 9*, 148 NH 644, 647 (2002) ("Our State Constitution gives the press a presumptive right of access to judicial proceedings and court records,

limited, however, by the necessity that it be balanced against a criminal defendant's fundamental right to a fair trial."); Super. Ct. R. 78 ("A trial judge should permit the media to photograph, record and broadcast all courtroom proceedings that are open to the public"). This presumption contemplates live feed coverage. Super. Ct. R. 78(f).

Judges may limit access under certain narrow circumstances. "Judges may limit electronic coverage if there is a substantial likelihood of harm to any person or other harmful consequence." *Petition of WMUR*, 148 NH at 650. "(A) trial judge should make specific findings of fact to support any decision limiting or prohibiting such coverage." *Id.* at 651. However, "(f)ear of jurors being exposed to potentially prejudicial information or of witnesses being exposed to the testimony of other witnesses generally will not be a valid basis for denying electronic coverage. The trial court's findings should not be based upon speculation, but rather upon the specific facts of the case at hand." *Id.*

At the hearing on this matter, in response to a question by the Court, defense counsel stated that a delay of one hour in broadcasting pretrial hearings in their entirety would not have the same prejudicial effect as live feed coverage. While the prejudicial effect of live coverage is debatable, a broadcast delay will provide some breathing room if unexpected events occur during the hearings which should not be broadcast. Given the nature of this case and the unique issues it raises, such a delay is prudent. See e.g., *Ring v. Arizona*, 536 US 584, 606 (2002) ("(T)here is no doubt that 'death is different.'"); *Woodson v. North Carolina*, 428 US 280, 305 (1976) ("(T)he penalty of death is qualitatively

different from a sentence of imprisonment (T)here is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment.") Moreover, a short delay will not significantly impact the purpose of live feed coverage as articulated by WMUR, that is, to enhance public understanding of the legal and public policy issues raised by this case.

Accordingly, WMUR's petition to amend is DENIED as to live coverage of pretrial hearings. However, WMUR may broadcast the entirety of these hearings after a one hour delay. This order is without prejudice to WMUR to renew its petition to allow live coverage of the trial of this case, but not earlier than two months before trial.

SO ORDERED.

4/13/07
Date

Kathleen A. McGuire
Kathleen A. McGuire
Presiding Justice